

**UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE**

Office of Business Liaison

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Employers' Responsibility Under The Law -- Document Review Standard

The standard for review of documents in the employment eligibility verification process is that a given document **reasonably** appear on its face (1) to be genuine and (2) to relate to the individual who presents it. In other words, an employer or employer's agent who signs Section 2 of the Form I-9 is not attesting to the legitimacy of the status of the person who presents the document, but rather to the fact that he or she has reviewed the original document and that it **appears** to him or her, upon reasonable inspection of its features and the information it contains, to be genuine and to have been issued to the employee who has submitted it for employment eligibility verification purposes.

Relationship between document review and continued employment

If a card appears genuine and to relate to the person presenting it, the employer should not dismiss that employee (for reasons related to the document review process). However, if a card appears questionable because of any irregularity, the employer should reject it for employment eligibility verification purposes and ask the individual to produce other acceptable I-9 documentation. In cases where acceptable documentation that **appears genuine and to relate to the individual presenting it** cannot be produced, the employee should be considered **not authorized to work**.

Constructive knowledge

Knowingly hiring or continuing to employ unauthorized aliens is a serious offense that is punishable under law. In this context, the term **knowing** includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer (1) fails to complete or improperly completes the Form I-9, **or** (2) has information available to it that would indicate that the alien is not authorized to work (such as Labor Certification and/or an Application for Prospective Employment), **or** (3) acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

Cautionary note: Knowledge that an employee is unauthorized may **not** be inferred from that employee's foreign appearance or accent.

Verification of employment eligibility with INS

Employers do not need to -- **and should not attempt to** -- verify “A” numbers or INS documentation of alien workers in general, or even of individuals whom they suspect for any reason to be ineligible to work. Aside from inquiries made by authorized officials in the course of worksite enforcement cases, verification of employment eligibility is authorized **ONLY** by officially registered employer participants in INS’ automated verification system pilot projects. Questions about participation in INS verification pilot projects may be directed to INS’ SAVE Program at (202) 514-2317.

How does verification of a match between name and Social Security number fit in?

An unrestricted Social Security card is a List C #1 document for employment eligibility verification purposes, meaning that an employee who presents an employer with this document may be considered authorized to work in the US. However, since the SSN serves an important function in matching tax and social security records to the name of an employee for whom payroll records are submitted by an employer, the Social Security Administration (SSA) and Internal Revenue Service (IRS) both recommend that employers do two things in the *payroll administration* portion of new hire processing: (1) see each employee’s Social Security card and (2) use SSA’s Enumeration Verification Service (EVS) to verify that a given employee’s name matches his or her SSN in SSA’s records. To use this system, employers may call SSA at (800)772-1213.

Unfortunately, SSA’s EVS program has been confused by some employers with authorized INS employment verification pilots and misunderstood accordingly as a means by which employment eligibility can be determined. Although it is possible that the explanation for a given name-SSN mismatch is that the person is not eligible to work in the US and/or is using a false SSN or SSN falsely, there are many other reasons for name-SSN mismatches (see SSA document entitled “Critical Links,” available from this office).

An employer who chooses to use SSA’s EVS system during the employment eligibility verification (Form I-9) process is not prohibited from doing so, but must use the system non-discriminatorily for all employees. Whether EVS is used during the I-9 process or incident to other new hire paperwork, however, it is recommended that employers cross-reference the response from SSA with the employer’s I-9 record relating to that employee. If the employee has used the Social Security card as a List C document, the fact that SSA cannot reconcile the name to the SSN calls the genuineness of the document into question. This does not signal the employer to terminate the person, but rather to request other acceptable documentation for I-9 purposes. If the person provides new documentation that appears genuine and to have been issued to him or her, the Form I-9 may be amended accordingly. If the employee cannot provide new documentation, however, he or she should be directed to the nearest SSA office for assistance. In such cases, persons with genuine SSN’s will return to the employer with two important objectives accomplished: (1) the SSN will now relate to the employee’s name for the employer’s payroll purposes and (2) the employee’s SSA account (which was in “suspense” if the name and number did not correspond) will have been corrected so that future wages and benefits can be credited to him or her properly.

For further information or assistance:

As indicated above, neither the Office of Business Liaison (OBL) nor any INS official is permitted to check INS records to verify employment eligibility. However, since employers' standard of review is the appearance of a document presented for employment eligibility verification purposes to determine if it "appears genuine" and "relates to the individual" presenting it, OBL will assist employers in reviewing documents. Employers who doubt the genuineness of or have reason to question the authenticity of an INS-issued document may photocopy it front and back and fax it to this office (see fax number in heading above) with a request for assistance.

In response to such requests, OBL educates employers in reviewing information elements from the front of a document that must comport with corresponding information elements from the back, as well as directing attention to typeface and other inconsistencies that may call the genuineness of the document into question. To facilitate compliance by these employers and help them avoid unlawful discriminatory practices, OBL assists to understand those standards and administer them together.

Although it is OBL's goal to educate employers rather than provide ongoing case-by-case assistance, the information provided sometimes results in an employer's decision not to accept a certain document because it has decided that the document fails the "genuineness" and/or "relates to" test. That does not necessarily mean that the person is not authorized to work (as consultation of INS databases would or should show), nor that the person should be terminated from employment, but rather that the document at issue does not meet the standard(s). Other documentation from the same person that is on a List of Acceptable Documents for I-9 purposes and meets the standard(s) may be accepted and the Form I-9 completed accordingly.

Do you need the Handbook for Employers?

INS' guide to the employment eligibility verification process is the **Handbook for Employers** (publication M-274)

Do you need the "Guide to Selected Travel/Identity Documents?"

Although this pamphlet was prepared for law enforcement officers, it may be of interest to employers. It depicts and describes various documents issued to aliens for travel and admission to, or employment in, the United States.

To order: *You may order either of these documents by using the number for "Forms" in the heading above or through the Office of Business Liaison by fax or e-mail..*